# In the Supreme Court of the United States

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OCTOBER TERM, 1939

No. [redacted] 80

JULIUS G. BRASHEAR, CHARLES E. GRIGGS and MRS. CHARLES E. GRIGGS, his wife, in their own behalf and in behalf of others similarly situated, and HARRY W. HILL, Receiver of Intermountain Building & Loan Association, a corporation, successor to Henry S. McCluskey, and George A. Mauk, Receivers of Intermountain Building & Loan Association, a corporation,

*Petitioners,*

vs.

INTERMOUNTAIN BUILDING & LOAN ASSOCIATION, a corporation, CHARLES G. JOHNSON, State Treasurer of California, and JUSTUS E. CRAEMER, Building and Loan Commissioner of California,

*Respondents.*

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

## PETITION FOR WRIT OF CERTIORARI
## and
## SUPPORTING BRIEF AND APPENDIX

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INTERMOUNTAIN BUILDING & LOAN ASSOCIATION, a corporation, CHARLES G. JOHNSON, State Treasurer of California, and JUSTUS E. CRAEMER, Building and Loan Commissioner of California,

*Respondents.*

**Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit**

*To the Honorable Chief Justice, and Associate Justices of the Supreme Court of the United States:*

MAY IT PLEASE THE COURT:

The petitioners, Julius G. Brashear, Charles E. Griggs and Mrs. Charles E. Griggs, his wife (in their own behalf and in behalf of others similarly situated), and Harry W. Hill, Receiver of Intermountain Building & Loan Association, an Utah corporation, by Thomas W. Nealon and Alexander B. Baker, their respective attorneys, pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit (R. 1147, Vol. III), which modified and, as modified, affirmed a judgment and decree of the District Court of the United States for the Southern District of California, Central Division, refusing to appoint an ancillary receiver in aid of the primary receivership and dissolving a temporary restraining order under which the Building and Loan Commissioner of California was theretofore restrained from liquidating and distributing cash and bonds on deposit in California in disregard of the contract lien rights of petitioners and others similarly situated, who alleged the cash and bonds were deposited by Intermountain Building & Loan Association while it was insolvent, and in breach of an express trust theretofore existing in their favor.

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## OPINION OF THE COURT BELOW

The Circuit Court of Appeals rendered an opinion which is reported in 109 Fed. (2d) 857-863.

## JURISDICTION

This Court has jurisdiction to review the judgment and decree as rendered below, under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938), and under Rule 38 of the Revised Rules of this Court which became effective February 27, 1939. The date of the judgment and decree of the Circuit Court of Appeals sought to be reviewed is February 20, 1940. Motion for rehearing was filed in the Circuit Court of Appeals on March 20, 1940, and denied on April 9, 1940. An order was made staying issuance of mandate to and including May 31, 1940.

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## CONSTITUTION AND STATUTES INVOLVED

The constitutional provisions and statutes involved are Article IV, Sections 1 and 2, and the Fourteenth Amendment, of the Constitution of the United States, as well as California Statutes of 1931, p. 843, and Statutes of 1935, p. 1507, known as the Building and Loan Association Act. The pertinent California Code provisions are set forth in an Appendix, infra, at pages i to ix.

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## SUMMARY STATEMENT OF MATTER INVOLVED

On April 18, 1933, Guadalupe R. Gallegos and certain investors in Intermountain Building & Loan Association, commenced a class action in the District

Court of the United States for the District of Arizona, charging the Association with breach of trust, mismanagement and insolvency and praying for the appointment of a receiver (R. 764-796).

Intermountain Building & Loan Association is an Utah corporation incorporated November 16, 1920 (R. 470). The Association sold its certificates and transacted a building and loan business in Utah, Arizona, Colorado, Oregon, Idaho, Wyoming, California and the Dominion of Canada. Its maximum paid in capital did not exceed $3,460.00 (R. 368). The preponderating number and monetary value (R. 398) of certificates so issued and sold contained the following recital (R. 769-770):

> "SECURITY.
>
> As security for the performance of obligations of the Association hereunder, the Association will hold intact, subject to the constant examination and inspection of the banking department of the State of Utah first mortgages on improved Real Estate, in an amount equal to at least 100% of its liabilities hereunder, less the amount of any loans made on this and like certificates or any certificates issued in lieu thereof."

(hereinafter referred to as the "security clause").

In April of 1927 the Association, desiring to transact business in California (R. 571), placed a fifty-thousand dollar time certificate of deposit with the Building and Loan Commissioner of that state, receiving its license on April 25, 1927 (R. 697). This time

certificate of deposit was later withdrawn and notes secured by real property mortgages were substituted. On August 13, 1931, the California Building and Loan Commissioner demanded that the Association immediately increase the guaranty deposit by another fifty thousand dollars (R. 703, 705). After receiving a threatening telegram from the Commissioner (R. 705) the Association deposited an additional fifty thousand dollars (R. 707). Prior to applying for the California license the Association had sold $48,161.80 of its certificates in that state (R. 313).

A year later in such suit the Arizona court appointed a receiver pendente lite (R. 476), and on February 8, 1936, made the receiver's appointment permanent (R. 477-478), finding at that time that the Association was insolvent by more than four hundred thousand dollars (R. 517), and that such insolvency had existed for more than seven years (R. 517-518). In this class action the court found that at all times since incorporation all assets of the Association constituted a trust fund for investors whose certificates contained a security clause and that the Association had at all times been the trustee for such investors (R. 526-527). The court impressed an equitable lien upon all assets of the Association wheresoever situated (R. 530-531) and adjudged that the title thereto of the Receiver related back to April 18, 1933, when the bill was filed (R. 534).

On March 29, 1934, the California Building and Loan Commissioner seized the securities previously

deposited by the Association with the State Treasurer (R. 559, 713-714).

On August 21, 1935, the Building and Loan Commissioner of California commenced a proceeding in the Superior Court of Los Angeles County asking instructions for distribution of the funds he had seized (R. 711-743). Neither the Association nor its previously appointed receiver appeared in the California proceeding. On December 28, 1935, the Superior Court of Los Angeles County entered its order directing distribution of the guaranty fund exclusively to those who were residents of California within the meaning of the State Act (R. 755-759).

Seeking to enjoin the California Treasurer as Building and Loan Commissioner from a preferential distribution to California investors to the exclusion of others similarly situated, petitioners commenced an action on February 27, 1936, in the District Court of the United States for the Southern District of California, Central Division, alleging that the California Building and Loan Association Act insofar as it required an exclusive distribution of assets to California investors was unconstitutional, and inadequate, and further alleging that when the securities were deposited by the Association with the California officials the Association was insolvent and such securities were received with that knowledge. The Bill of Complaint further alleged that the securities deposited by the Association in California had been purchased with funds which the Association held in trust for the con-

tract lien-holding creditors and that such contract lien-holding creditors had and asserted liens thereon paramount to claims of general creditors (R. 2-43). A temporary restraining order was issued on the Bill of Complaint (R. 43-45) and the same remained in force until dissolved upon final judgment (R. 174).

The trial court found that the California Building and Loan Association Act was valid and constitutional and that when the Association deposited its securities in California it was solvent and that the Building and Loan Commissioner of that State had no reason to believe otherwise, and that the Association after making the two $50,000 deposits still held intact without resort to the funds and securities so deposited, first mortgages on improved real estate in an amount in excess of one hundred per cent of its liability upon those certificates containing the security clause, after deducting the amount of loans outstanding against such certificates (R. 149-153). As a matter of law, the trial court concluded that the deposits of cash and securities were legal and valid, and not subject to any prior trust or encumbrance and that the California Building and Loan Commissioner was entitled to liquidate and distribute the same for the benefit of California investors (R. 153-154). To the findings and conclusions of law in question timely and adequate objections were made, overruled and exceptions allowed (R. 154, 172). The Circuit Court of Appeals modified the judgment and decree to the extent that it held that such findings of fact and conclusions of law were unnecessary and at the same time declining

to determine whether they were correct or erroneous. As so modified the decree was affirmed. (*Brashear v. Intermountain Building & Loan Association* (C.C.A. 9), 109 Fed. (2d) 857-863)

The principal questions presented, therefore, are:

(1) Are the findings of fact, conclusions of law and decree as made by the United States District Court for the District of Arizona in the original class suit with respect to the period over which the Association was insolvent, the right and title of the receiver to the assets and the trust character thereof, res judicata as to the California investors and their privies, and hence entitled in California to full faith and credit under Article IV of the Constitution of the United States?

(2) Were petitioners entitled to a determination of whether the California Building and Loan Act is unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States on the basis that it abridges their privileges as investors in the Association and impairs the obligations of their several contracts and deprives them of their property without due process of law?

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## SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals erred in deciding that the final decree entered in the case of *Gallegos v. Intermountain Building & Loan Association,* together with the findings of fact and conclusions of law therein

were not res judicata or otherwise binding upon appellees as to their rights or the rights of the California investors whom they represented with respect to the distribution of the guaranty fund and other assets located in California, for the reason that said findings of fact, conclusions of law and final decree were made and entered in a class suit in which all parties were before the court by way of representation and after answer had been filed to the merits by th Association from which no appeal had been taken and hence said proceedings had become res judicata and entitled to full faith and credit under the provisions of Article IV of the Constitution of the United States.

2. The Circuit Court of Appeals erred in deciding that it was unnecessary to determine whether or not the California Building and Loan Association Act was constitutional insofar as it affected the rights of petitioners and those whom they represent for the reason that prior to the commencement of the action in the District Court of the United States for the Southern District of California, Central Division, the Building and Loan Commissioner of California had obtained an order from the Superior Court of Los Angeles County directing a preferential distribution of the guaranty fund to California investors, to which proceeding petitioners and those whom they represented were not a party and hence were deprived of their day in court and thus were remitted to the courts of the United States for preservation and enforcement of their right and remedy.

3. The Circuit Court of Appeals erred in deciding that it was unnecessary for it to determine whether or not the Building and Loan Association Act of California was in violation of the Fourteenth Amendment to the Constitution of the United States as being an impairment of the contract lien rights of those investors in the Association who resided without the State of California, for the reason that prior to the commencement of the action in the District Court of the United States for the Southern District of California, Central Division, the Building and Loan Commissioner of California had obtained an order from the Superior Court of Los Angeles County directing a preferential distribution of the guaranty fund to California investors, to which proceeding petitioners and those whom they represented were not a party and hence were deprived of their day in court and thus were remitted to the courts of the United States for preservation and enforcement of their right and remedy.

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## REASONS RELIED ON FOR GRANTING WRIT

**Point A:**

In holding that the final decree, findings of fact and conclusions of law as made by the United States District Court for the District of Arizona in the case of *Gallegos v. Intermountain Building & Loan Association* were not binding upon or res judicata as to California investors, and their privies, namely, the Building and Loan Commissioner and the State Treasurer, —the Circuit Court of Appeals has decided an import-

ant question of Federal law in a way probably not in accord with applicable decisions of this Court.

**Point B:**

In holding that it was unnecessary to determine the truth or falsity of the allegations in petitioner's pleadings to the effect that the securities on deposit in California represented the fruits of trust funds belonging to petitioners and that petitioners were entitled to a return or distribution of the securities to satisfy their existing contract liens, the Circuit Court of Appeals has decided an important question of Federal law which appears not to have been and should be settled by this Court.

**Point C:**

In holding that it was unnecessary to determine whether or not the Building and Loan Association Act of California violated the Fourteenth Amendment to the Constitution of the United States and impaired the contract lien rights of those investors who were not residents of California, the Circuit Court of Appeals has decided an important question of Federal law probably in conflict with applicable decisions of this Court.

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